

### **REMARKS**

This amendment is responsive to the Office Action mailed September 29, 2008. Reconsideration and allowance of claims 1-18 are requested.

### **Status of the claims**

The Office Action reports examination of original claims 1-10.

Claims 1-10 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Shelton et al., U.S. Pat. No. 6,958,498 B2 (hereinafter "Shelton").

Claims 1-7 stand rejected on the basis of alleged nonstatutory double-patenting respective to claims 1-37 of Shelton.

### **Drawing Amendment**

Figures 1-4 are amended to be labeled "Prior Art".

### **Specification Amendment**

The specification is amended as requested at Office Action page 2.

### **Claim amendments**

**Claim 1** is amended to recite a first layer ... having a first conductivity type and a resistivity of less than twenty ohms per square. This amendment to claim 1 is supported in the original specification at least at WO 2005/065325 ¶[0040] and in Provisional no. 60/532,840 at least at page 4 lines 3-4.

**Claim 3** is amended to delete recitation believed to be extraneous.

**Claim 8** is amended to recite the first trace including at least one area designated for bonding having a first surface level, ... and the second trace including at least one area designated for bonding having a second surface level substantially coplanar with the first surface level. This amendment to claim 8 is supported in the original specification at least at WO 2005/065325 ¶[0040] and original claim 7 and in Provisional no. 60/532,840 at least at page 4 lines 3-4.

**Claim 9** is amended to correct an obvious error in the preamble.

**Claim 10** is amended to depend directly from claim 8 and to recite the substantially coplanar first and second surface levels being coplanar at least to within

a deformation range of the bumps. This amendment to claim 10 is supported in the original specification at least at WO 2005/065325 ¶[0040] and in Provisional no. 60/532,840 at least at page 4 lines 3-4.

New **claim 11** is based on original claim 1 and further recites wherein the first contact trace includes at least one area designated for bonding having a first surface level and the second contact trace includes at least one area designated for bonding having a second surface level, the first surface level and the second surface level being within a deformation range of a bonding gold layer. The further recitation is supported in the original specification at least at WO 2005/065325 ¶[0040] and in Provisional no. 60/532,840 at least at page 4 lines 9-12.

New **claims 12-16** correspond to selected original claims depending from claim 1, but depend from new independent claim 11. It is respectfully submitted that no new matter is added by new claims 12-16.

New **claim 17** corresponds to original claim 3 with the aforementioned recitation believed to be extraneous deleted, but depends from method claim 8. It is respectfully submitted that no new matter is added by new claim 17.

New **claim 18** is supported in the original specification at least at WO 2005/065325 ¶[0036] and in Provisional no. 60/532,840 at least at page 4 lines 16-17.

**The claims present patentable subject matter  
and should be allowed**

**Claim 1** recites the epitaxial structure forming an active light generating region between a first layer on a first side of the active region and having a first conductivity type and a resistivity of less than twenty ohms per square, and a second layer on a second side of the active region and having a second conductivity type. As explained at least at WO 2005/065325 ¶[0040] and in Provisional no. 60/532,840 at least at page 4 lines 1-4, this configuration facilitates adequate current spreading without the first contact trace being disposed on the outside of the chip.

Shelton does not disclose or fairly suggest this feature.

**Claim 7** recites wherein the surface of the first contact distal from the substrate and the surface of the second contact distal from the substrate are

substantially coplanar with one another. The Office Action cites Shelton Fig. 1 as disclosing this feature.

Drawings and pictures can anticipate claims if they clearly show the structure which is claimed. MPEP § 2125. The drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art, when viewed in conjunction with the written description of the article pictured. *Id.* In particular, when the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. *Id.*

Shelton expressly states: "It should be appreciated that the figures are not drawn to scale. In particular, the thickness of the various layers illustrated in FIGS. 1A-F are greatly exaggerated for clarity of illustration. Typically, the entire stack, including the mesa, is on the order of five microns thick." Shelton col. 10 line 66-col. 11 line 3. In view of the express disclaimer and the guidance of MPEP §2125, it is respectfully submitted that Shelton does not disclose or fairly suggest claim 7.

**Claim 8** has been amended to incorporate subject matter of claim 7. Accordingly, it is respectfully submitted that claim 8 also distinguishes patentably over the Shelton reference.

**Claim 10** depends from claim 8 and further specifies the substantially coplanar first and second surface levels being coplanar at least to within a deformation range of the bumps. Again, it is respectfully submitted that Shelton does not disclose or fairly suggest this subject matter.

**Claim 11** recites the first contact trace includes at least one area designated for bonding having a first surface level and the second contact trace includes at least one area designated for bonding having a second surface level, the first surface level and the second surface level being within a deformation range of a bonding gold layer. As explained at least at WO 2005/065325 ¶[0040] and in Provisional no. 60/532,840 at least at page 4 lines 9-12, this configuration facilitates reliable and reproducible connection across the chip or die. It is respectfully submitted that Shelton does not disclose or fairly suggest this subject matter.

Based on at least the foregoing, it is respectfully submitted that each of claims 1-18 present patentable subject matter. Accordingly, Applicants respectfully request allowance of claims 1-18.

**CONCLUSION**

For the reasons set forth above, it is respectfully submitted that claims 1-18 (all claims) present patentable subject matter and should be allowed. An early allowance of all claims is earnestly requested.

If personal contact is deemed advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned at 216.363.9000.

Respectfully submitted,

FAY SHARPE LLP

A handwritten signature in black ink, appearing to read 'SA McCollister', written over a horizontal line.

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